

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
August 2000 Session

STATE EX REL. BRENDA BUCKNER v. MAURICE BUCKNER

Appeal from the Chancery Court for Union County
No. 2490 Hon. Billy Joe White, Chancellor

FILED AUGUST 24, 2000

No. E2000-00959-COA-R3-CV

The State of Tennessee made AFDC payments to Brenda Buckner for the support of her three children from February 1992 through October 1996. The youngest child reached majority in December 1997. The State then filed a Petition against the children's father, Maurice Buckner, to set retroactive child support from which the State would be reimbursed for AFDC payments pursuant to Tenn. Code Ann. § 71-3-124. The child support referee awarded the State a judgment for \$9,356 against the father. The Chancellor reversed, finding that the father did not owe retroactive child support because he had made mortgage payments on the home in which the children lived until the youngest child reached majority. The State appeals. Applying T.C.A. § 71-3-124 and Tenn. Comp. R. & Reg. 2140-1-3.34, we find that Brenda Buckner assigned her rights to child support to the State of Tennessee in exchange for public assistance, and, therefore, had no authority to waive child support payments in exchange for the father's payments on the mortgage. Accordingly, we reverse the judgment of the Trial Court.

Tenn. R. App. P. 3; Judgment of the Chancery Court Reversed; case Remanded.

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, J. and CHARLES D. SUSANO, JR., J., joined.

Paul G. Summers and Elizabeth C. Driver, Nashville, Tennessee, for the Appellant, the State of Tennessee.

Gail F. Wortley, Knoxville, Tennessee, for the Appellee, Maurice Dale Buckner.

OPINION

Background

Brenda Carol Buckner and Maurice Dale Buckner, were married in 1974. They have three children: Micky Dale, born June 6, 1975, Tonya Carol, born December 16, 1978, and David Shaun, born December 22, 1979. Ms. Buckner received Aid to Families with Dependent Children (AFDC) on behalf of the children from February 1992 through October 1996. Mr. Buckner filed a Complaint for Divorce against Ms. Buckner in Union County Chancery Court on March 15, 1994. On December 16, 1997, the State of Tennessee, on behalf of Ms. Buckner, filed a Petition to Set Child Support in the Chancery Court for Union County. The Petition alleged that Ms. Buckner was a recipient of child support enforcement services under Title IV-D of the Social Security Act, 42 U.S.C. 651 *et seq.*, and that the District Attorney General for Union County was authorized to file the Petition by virtue of T.C.A. § 71-3-124. The Petition averred that Mr. Buckner “is capable of paying current and arrears child support,” and asked the Trial Court to grant a judgment against Mr. Buckner for retroactive support accruing from February 1992. The Petition sought “at least child support guidelines per month current child support, \$50.00 per month on the child support arrearage, and the clerk’s 5% fee.”

Mr. Buckner answered the Petition on April 15, 1998, stating that all three children were over the age of eighteen years. Mr. Buckner argued he was, therefore, no longer legally responsible for them, and current child support was not proper. He alleged as an affirmative defense the fact that “[he] through various Chapter 13 Bankruptcy petition provided a place for the parties’ minor children to reside and [Ms. Buckner] accepted such provisions in lieu of child support.”

The Child Support Referee heard the matter on July 16, 1998, and filed an Order Setting Child Support. The Referee found that Ms. Buckner had received AFDC from the State of Tennessee for the benefit of the children from February 1992 through October 31, 1996, and that she had assigned her rights to all past, present and future child support to the State. The Order provided that Mr. Buckner owed retroactive support to the State of Tennessee only, since all children were emancipated as of December 21, 1997. Judgment was entered in favor of the State of Tennessee for \$9,356.00 for the AFDC payments. Mr. Buckner was ordered to pay \$157.50 per month, which represents \$150.00 per month on retroactive child support and the clerk’s fee of \$7.50, until the judgment was satisfied. The Order further stated that Mr. Buckner “has provided a home for the children for the past seven years at a cost of \$500 per month, paid by [Mr. Buckner] and therefore retroactive support is not owed to [Ms. Buckner].”

On July 22, 1999, after all of the above proceedings, Maurice Buckner and Brenda Buckner filed a Marital Dissolution Agreement in Union Chancery Court. On that same day, a Final Decree of divorce was entered, incorporating the Marital Dissolution Agreement. Paragraph 10 of the MDA provides:

10. NON-DISCHARGEABILITY: With respect to each party’s responsibility for payment of certain debts and liabilities, and their obligation to hold the other harmless for the payment thereof, the

parties understand and agree that their obligation is a non-dischargeable debt under the Bankruptcy Code, this obligation being part of the final financial support settlement for both parties.

Paragraph 18 of the Agreement provides:

18. CHILD SUPPORT: There are no minor children. All matters of prior child support have been determined, subject to the Defendant's appeal, in the Referee's Court for Union County, Tennessee.

Paragraph 20 of the Agreement provides:

20. DEBTS: There are no joint debts. Each party shall be responsible for their individual indebtedness and hold the other party harmless therefrom.

The Trial Court heard Mr. Buckner's appeal of the Referee's Order in the child support matter on September 23, 1999. At that hearing, neither side presented any additional evidence or testimony of witnesses. Both sides agreed that a decision could be rendered upon the Referee's Order and the exhibits in the record. The Trial Court held:

that the Respondent does not owe retroactive support to the State of Tennessee, as the Referee found that the Respondent provided a home for the children for the past seven years, which amount would have been equal to or greater than his obligation for support.

Discussion

The State of Tennessee appeals the Judgment of the Trial Court and presents the sole issue of whether the Trial Court erred by failing to reimburse the State of Tennessee for AFDC payments made on behalf of the children of Brenda Buckner and Maurice Buckner. The Referee's Order in this case contained both findings of fact and conclusions of law, and that Order was reversed by the Trial Court based on the evidence in the record. Our review is *de novo* upon the record, accompanied by a presumption of the correctness of the findings of fact of the Trial Court, unless the preponderance of the evidence is otherwise. Rule 13(d), T.R.A.P.; *Davis v. Inman*, 974 S.W.2d 689, 692 (Tenn. 1998). The Trial Court's conclusions of law are subject to a *de novo* review with no presumption of correctness. *Ganzevoort v. Russell*, 949 S.W.2d 293 (Tenn. 1997).

Ms. Buckner's receipt of AFDC for the support of her three children was necessarily predicated upon her agreement to certain conditions as set out by statute and in the Rules and Regulations of the Tennessee Department of Human Services. *See* Tenn. Code Ann. § 71-3-124. One of those rules requires that she assign her right to child support from third parties to the State:

1240-1-3-.34 ASSIGNMENT OF SUPPORT RIGHTS - AFDC ONLY. As a condition of his/her eligibility, the AFDC applicant/recipient *must assign to the state any rights to support* on behalf of all members of the AFDC aid group. Tennessee law specifies that *receipt of AFDC in fact constitutes an automatic assignment of ongoing and accrued support rights. The assignment requirement cannot be waived* [Emphasis added.]

See also, *State ex rel. Massengale v. Massengale*, No. 01A01-9901-CV-00052, 1999 WL 820736 at *4 (Tenn. Ct. App. July 14, 1999) (fn 1: “Although the State does not explain the basis for its standing to seek [Mother’s] child support, the record indicates that [Mother] is a recipient of Aid to Families with Dependent Children. Therefore, [she] would be required to assign her rights to support from third parties to the State. See T.C.A. § 71-3-124.”) As the regulation indicates, this requirement of assignment of rights to the State cannot be waived. Accordingly, because Ms. Buckner received AFDC payments to support her children, she was without authority to enter into any agreement with Mr. Buckner whereby he would not owe child support for the children in exchange for consideration of any kind, including the payment of a mortgage.

Additional considerations impact whether these parents could agree that Mr. Buckner’s making mortgage payments would substitute for child support. We discussed this situation in *Corbett v. Corbett*, No. 03A01-9601-CH-00008, 1996 WL 480741 (Tenn. Ct. App. August 26, 1996). In that case, the father argued that we should consider the fact that he is making half of the mortgage payment and treat that as part of his child support. We held:

This we cannot do. The Guidelines clearly provide that all support . . . “must be paid to the custodial parent” Tenn. Comp. R. & Regs., ch. 1240-2-4-.04(3). Therefore, we cannot consider a payment made by Husband directly to the mortgage holder.

There is another reason why we should not consider Husband’s payment of half of the mortgage as a part of his child support obligation. When the house is sold, he will receive half of the net proceeds. Since the mortgage payment reduces the debt, it correspondingly increases the parties’ equity. Therefore, he can expect to recoup some of his outlay on the mortgage when the property is sold. He will also benefit – again to the extent of fifty percent – in any increase in the equity occasioned by inflation.

Massengale at 6.

The State argues, and we agree, that Mr. Buckner cannot be given credit for the mortgage payments made by him. Mr. Buckner’s payments to the mortgage holder were payments on a debt already owed by Mr. Buckner to the mortgage holder. Mr. Buckner’s mortgage payments,

as in *Massengale*, result in direct benefits to Mr. Buckner. These parents cannot agree to have the father make payments on a mortgage owed by the father for the benefit of the father and use this payment to deprive the State of its right to reimbursement for AFDC payments made for the benefit of the children.

Based on the foregoing, we find that the Trial Court erred in finding that Mr. Buckner was not obligated to pay retroactive child support to the State because he had made mortgage payments on the home where the children lived during their minority.

CONCLUSION

The judgment of the Trial Court is reversed and this cause is remanded to the Trial Court with directions to the Trial Court to award retroactive support for the AFDC payments made from February, 1992 through October, 1996, and for such further proceedings as may be required, if any, consistent with this Opinion, and for collection of the costs below. The costs on appeal are assessed against the Appellee, Maurice Buckner.

D. MICHAEL SWINEY, JUDGE